

PREET BHARARA
United States Attorney for the
Southern District of New York
By: TARA M. La MORTE
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel: (212) 637-2746
Fax: (212) 637-2702
E-mail:tara.lamorte2@usdoj.gov

14-CV-9638

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIN CRUMMENAUER and EDWARD O'LEARY,

Plaintiffs,

-against-

MIDDLETOWN COMMUNITY HEALTH CENTER, INC.
AND ORANGE REGIONAL MEDICAL CENTER,

Defendants.

NOTICE OF REMOVAL

14 Civ. ()

From the Supreme Court of the State of
New York, County of Orange

Index No. 004314/2013

Defendant Middletown Community Health Center ("MCHC"), by and through its attorney, Preet Bharara, United States Attorney for the Southern District of New York, hereby removes the above-captioned action to the United States District Court for the Southern District of New York pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2). The grounds for removal are as follows:

1. On or about May 22, 2013, Erin Crummenauer and Edward O'Leary (collectively the "Plaintiffs") commenced an action in New York State Supreme Court, County of Orange, by

filings a Summons and Verified Complaint under Index Number 004314/2013. A true and correct copy of the Summons and Verified complaint is attached hereto as Exhibit 1.

2. In their Verified Complaint, Plaintiffs allege, *inter alia*, that the MCHC, along with defendant Orange Regional Medical Center (“ORMC”), provided labor and delivery services and post-delivery services to Plaintiffs on or about April 7, 2012. *See generally* Ex. 1.

3. According to Plaintiffs, MCHC and ORMC both held themselves out as “duly qualified to render proper and adequate medical and surgical services to . . . plaintiffs,” *id.* ¶¶ 4, 6, undertook to “properly protect [the body of Plaintiffs’ stillborn child] against loss, mutilation and indignities, pending delivery to plaintiffs for funeral and burial,” *id.* ¶¶ 22-23, but did so “negligen[tly],” thus resulting in the “los[s]” and “destr[u]ction” of “the body of the child,” *id.* ¶¶ 24-25. Plaintiffs allege that they “have been deprived of the remains and body of their child, have been greatly injured in their feelings, and suffered and still suffer great pain and grievous mental anguish and sorrow.” *Id.* ¶ 28.

4. Pursuant to the Public Health Service Act, 42 U.S.C. § 201, *et seq.*, as amended by the Federally Supported Health Center Assistance Act, 42 U.S.C. § 233(g)-(n), MCHC was deemed to be an employee of the United States Public Health Service at all times relevant to the allegations in the Verified Complaint. *See* 42 U.S.C. § 233(g). Accordingly, MCHC is eligible for coverage under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401(b) and 2671-2680 (the “FTCA”).

5. The FTCA provides the exclusive remedy with respect to Plaintiffs’ allegations of medical malpractice. *See* 42 U.S.C. § 233(a).

6. Pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2), this action may be removed to this Court because: (i) there has been no trial of this action; and (ii) this is a civil action brought against, *inter alia*, a party deemed to be an employee of the United States which was acting within the scope of its employment.

7. Attached hereto as Exhibit 2 is a copy of the Certification of Preet Bharara, United States Attorney for the Southern District of New York, dated May 19, 2014. The Certification states that MCHC was an employee of the United States Public Health Service and was acting within the scope of its employment at all times relevant to the allegations in the Verified Complaint.

Dated: December 5, 2014
New York, New York

Respectfully submitted,

PREET BHARARA
United States Attorney

By: 

TARA M. La MORTE
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2746
Fax: (212) 637-2702
E-mail: tara.lamorte2@usdoj.gov

TO: Craig Phemister, Esq.
SOBO & SOBO LLP
One Dolson Avenue
Middletown, New York 10940
Counsel for Plaintiffs

MARTIN, CLEARWATER & BELL LLP
245 Main Street, 5th Floor
White Plains, NY 10601
Counsel for Defendant
Orange Regional Medical Center

EXHIBIT 1

TO: THE COUNTY CLERK OF ORANGE COUNTY
Application for INDEX NUMBER pursuant to
Section 8018 of CPLR

MUST BE MADE OUT
IN DUPLICATE

XX SUPREME
COUNTY COURT

FEE - \$210

2013 004314

Space below to be TYPED or PRINTED by Applicant

FULL TITLE OF ACTION OR PROCEEDING:

ERIN CRUMMENAUER and EDWARD O'LEARY,

Plaintiffs,
-against-

MIDDLETOWN COMMUNITY HEALTH CENTER, INC. and ORANGE REGIONAL
MEDICAL CENTER,

Defendant.

SOBO & SOBO, LLP

One Dolson Avenue
Middletown, NY 10940

Name and Address of Attorney for Plaintiff or Petitioner

Unknown

Name and Address of Attorney for Defendant or Respondent

Craig Phemister, Esq.

Name of Applicant

FILED
ORANGE COUNTY CLERK
MAY 22 2014

SUBMITTED PAPERS ARE: (Please check below)

Summons & Complaint
 Summons w/Notice
 Notice of Petition
 Petition

Order to Show Cause
 Poor Person Afft./Atty's Cert.
 Other:

THIS FORM MUST BE COMPLETED & SIGNED BY APPLICANT:

(Signature)

SPACE BELOW FOR OFFICE USE ONLY

Requisitioned By: _____

Date: _____

Date of Filing:

Index 2013 004314

Plaintiff designates
Orange County
as the place of trial.

The basis of venue is the
Plaintiff's residence address.

Plaintiff resides at
Howells, NY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ERIN CRUMMENAUER and EDWARD O'LEARY, X

Plaintiffs,

SUMMONS

-against-

MIDDLETOWN COMMUNITY HEALTH CENTER, INC.
and ORANGE REGIONAL MEDICAL CENTER,

Defendant. X

To the above-named defendant(s):

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within - 20- days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

SOBO & SOBO, LLP

CHARLES PHILIPPLISTER, ESQ.
Attorneys for Plaintiff
One Dolson Avenue
Middletown, NY 10940
(845) 343-0466

Dated: May 17, 2013
Middletown, New York

Defendants' addresses: See Complaint

2013 MAY 22
ORANGE COUNTY CLERK
FILED

Official FILED

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE**

ERIN CRUMMENAUER and EDWARD O'LEARY,

Plaintiffs,

2013 004314

- against -

**MIDDLETOWN COMMUNITY HEALTH CENTER,
INC. and ORANGE REGIONAL MEDICAL
CENTER,**

**VERIFIED
COMPLAINT**

Defendants.

Plaintiffs, complaining of the defendants, by their attorneys, SOBO & SOBO, LLP respectfully state and allege, upon information and belief:

1. That at the time of the commencement of this action, plaintiffs resided in the County of Orange, State of New York.
2. That this action falls within one or more of the exemptions set forth in the CPLR §1602.
3. That at all times hereinafter mentioned, defendant, MIDDLETOWN COMMUNITY HEALTH CENTER, INC. was and still is a domestic not-for-profit corporation duly organized and existing under and by virtue of the laws of the State of New York.
4. That at all times hereinafter mentioned, defendant MIDDLETOWN COMMUNITY HEALTH CENTER, INC., its agents, servants and/or employees owned, operated, managed and controlled a certain facility for the treatment of the sick and ailing and pregnant in the County of Orange State of New York, and as such held itself out as duly qualified to render proper and adequate medical and surgical services to members of the general public, including plaintiffs, ERIN CRUMMENAUER and EDWARD O'LEARY.

ORANGE COUNTY CLERK
MAY 22 2014
FILED
11:45 AM

5. That at all times hereinafter mentioned, defendant, ORANGE REGIONAL MEDICAL CENTER was and still is a domestic not-for-profit corporation duly organized and existing under and by virtue of the laws of the State of New York.
6. That at all times hereinafter mentioned, defendant ORANGE REGIONAL MEDICAL CENTER, its agents, servants and/or employees owned, operated, managed and controlled a certain facility for the treatment of the sick and ailing and pregnant in the County of Orange State of New York, and as such held itself out as duly qualified to render proper and adequate medical and surgical services to members of the general public, including plaintiffs, ERIN CRUMMENAUER and EDWARD O'LEARY.
7. That on or about April 7, 2012, plaintiff ERIN CRUMMENAUER was admitted to defendant's hospital, ORANGE REGIONAL MEDICAL CENTER.
8. That on or about April 7, 2012, plaintiff ERIN CRUMMENAUER was admitted to defendant's hospital, ORANGE REGIONAL MEDICAL CENTER for the purpose of delivering a baby.
9. That on or about April 7, 2012, plaintiff ERIN CRUMMENAUER gave birth to a baby at defendant's hospital, ORANGE REGIONAL MEDICAL CENTER.
10. That on or about April 7, 2012, plaintiffs' child was born at defendant's hospital, ORANGE REGIONAL MEDICAL CENTER.
11. That on or about April 7, 2012, plaintiffs' child died at defendant's hospital, ORANGE REGIONAL MEDICAL CENTER.
12. That on or about April 7, 2012, defendant ORANGE REGIONAL MEDICAL CENTER, its agents, servants and/or employees obstetrically delivered a child of plaintiffs, ERIN CRUMMENAUER and EDWARD O'LEARY.

13. That on or about April 7, 2012, defendant MIDDLETOWN COMMUNITY HEALTH CENTER, its agents, servants and/or employees obstetrically delivered a child of plaintiffs, ERIN CRUMMENAUER and EDWARD O'LEARY.
14. That on or about April 7, 2012, defendant ORANGE REGIONAL MEDICAL CENTER, its agents, servants and/or employees, delivered a "stillborn" child of plaintiffs, ERIN CRUMMENAUER and EDWARD O'LEARY.
15. That on or about April 7, 2012, defendant MIDDLETOWN COMMUNITY HEALTH CENTER, its agents, servants and/or employees, delivered a "stillborn" child of plaintiffs, ERIN CRUMMENAUER and EDWARD O'LEARY.
16. That at all times herein mentioned, plaintiff EDWARD O'LEARY was the boyfriend of plaintiff ERIN CRUMMENAUER and is the father of the deceased child.
17. That on or about April 7, 2012, plaintiffs' child came under the care of defendant's hospital, ORANGE REGIONAL MEDICAL CENTER, its agents, servants and/or employees.
18. That on or about April 7, 2012, plaintiffs' child came under the care of defendant MIDDLETOWN COMMUNITY HEALTH CENTER, its agents, servants and/or employees.
19. That on or about April 7, 2012, defendant ORANGE REGIONAL MEDICAL CENTER, its agents, servants and/or employees took possession, custody and control of the body of the deceased child.
20. That on or about April 7, 2012, defendant MIDDLETOWN COMMUNITY HEALTH CENTER, its agents, servants and/or employees took possession, custody and control of the body of the deceased child.

21. Thereafter, plaintiffs requested the transfer of the body of the deceased child for the purpose of a proper funeral and burial.
22. Having accepted custody of the body of plaintiffs' child, defendant, ORANGE REGIONAL MEDICAL CENTER, its agents, servants and/or employees undertook to properly protect it against loss, mutilation and indignities, pending delivery to plaintiffs for funeral and burial.
23. Having accepted custody of the body of plaintiffs' child, defendant, MIDDLETOWN COMMUNITY HEALTH CENTER, its agents, servants and/or employees undertook to properly protect it against loss, mutilation and indignities, pending delivery to plaintiffs for funeral and burial.
24. That solely through the negligence of defendant, ORANGE REGIONAL MEDICAL CENTER, its agents, servants and/or employees, the body of the child was not given a funeral, nor burial, but was lost and/or destroyed.
25. That solely through the negligence of defendant, MIDDLETOWN COMMUNITY HEALTH CENTER, its agents, servants and/or employees, the body of the child was not given a funeral, nor burial, but was lost and/or destroyed.
26. Defendant, ORANGE REGIONAL MEDICAL CENTER, its agents, servants and/or employees deprived plaintiffs of the opportunity to bury the body of their child in accordance with their religious and familial beliefs.
27. Defendant, MIDDLETOWN COMMUNITY HEALTH CENTER, its agents, servants and/or employees deprived plaintiffs of the opportunity to bury the body of their child in accordance with their religious and familial beliefs

28. By reason of the foregoing, plaintiffs have been deprived of the remains and body of their child, have been greatly injured in their feelings, and suffered and still suffer great pain and grievous mental anguish and sorrow, all to their damage in a sum which exceeds the jurisdiction of all lower Courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff hereby demands judgment against the defendants in a sum that exceeds the jurisdiction of all lower Courts which would otherwise have jurisdiction; said sum to be determined at a trial of this matter.



Craig Phemister, Esq.
SOBO & SOBO, LLP
Attorneys for Plaintiffs
One Dolson Avenue
Middletown, New York 10940
845-343-7626

TO: Middletown Community Health Center, Inc.
27 North Street
Middletown, NY 10940

Orange Regional Medical Center
707 East Main St.
Middletown, NY 10940

VERIFICATION

STATE OF NEW YORK, COUNTY OF ORANGE ss:

ERIN CRUMMENAUER, being duly sworn says; I am one of the plaintiffs in the action herein; I have read the annexed Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Edward O'Leary
EDWARD O'LEARY

Sworn to before me on this
April 26, 2013
Elea Stelmack
NOTARY PUBLIC

Elea Stelmack Notary Public
Qualified in Orange City, NY
Registration No. 4978242
My Commission Expires 1-14-15

VERIFICATION

STATE OF NEW YORK, COUNTY OF ORANGE ss:

ERIN CRUMMENAUER, being duly sworn says; I am one of the plaintiffs in the action herein; I have read the annexed Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.


ERIN CRUMMENAUER

Sworn to before me on this
April 8, 2013, 2013
Elisa Stelmack
NOTARY PUBLIC

Elisa Stelmack Notary Public
Qualified in Orange City, NY
Registration No. 4976242
My Commission Expires 1-14-15

EXHIBIT 2

PREET BHARARA
United States Attorney for the
Southern District of New York
By: TARA M. La MORTE
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel: (212) 637-2746
Fax: (212) 637-2702
E-mail:tara.lamorte2@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

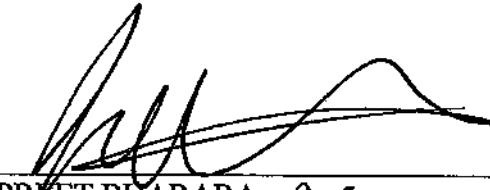
----- X
ERIN CRUMMENAUER and EDWARD O'LEARY, :
Plaintiffs, : CERTIFICATION
-against- :
Index No. 004314/2013
MIDDLETOWN COMMUNITY HEALTH CENTER, INC.:
AND ORANGE REGIONAL MEDICAL CENTER, : Supreme Court of New York,
Defendants. : County of Orange
----- X

I, PREET BHARARA, the United States Attorney for the Southern District of New York, pursuant to the provisions of 28 U.S.C. § 2679(d), and by virtue of the authority vested in me by the Attorney General under 28 C.F.R. § 15.4, hereby certify, on the information now available with respect to the claims alleged, that Defendant Middletown Community Health Center is an employee of the United States Public Health Service, as defined in 42 U.S.C. § 233(g)(1), and was acting within the scope of its employment for purposes of claims against it in connection with the labor and delivery services provided to Erin Crummenaur and post-delivery services provided to Crummenaur and Edward O'Leary during April 2012.

Accordingly, pursuant to 42 U.S.C. § 233(g), Middletown Community Health Center is deemed to be an employee of the United States under the Federal Tort Claims Act for the labor

and delivery services provided to Crummenaur and post-delivery services provided Crummenaur and O'Leary during April 2012.

Dated: New York, New York
May 19, 2014



PREET BHARARA 
United States Attorney
Southern District of New York